(2) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the use of alien crewmembers is permitted by the prevailing practice for the longshore activity(ies) in the U.S. port at issue, the judge's decision shall no longer have the conclusive effect specified in paragraph (b) of this section. Upon notice from the Administrator, the DHS and ETA shall cease the actions specified in § 655.665.

§ 655.675 Non-applicability of the Equal Access to Justice Act.

A proceeding under subpart G of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Subpart H—Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models, and Labor Attestation Requirements for Employers Using Nonimmigrants on H–1B1 Visas in Specialty Occupations

SOURCE: 59 FR 65659, 65676, Dec. 20, 1994, unless otherwise noted.

§ 655.700 What statutory provisions govern the employment of H–1B and H–1B1 nonimmigrants and how do employers apply for an H–1B or H–1B1 visa?

Under the H–1B1 visa, the Immigration and Nationality Act (INA), as amended, permits nonimmigrant professionals in specialty occupations from countries with which the U.S. has entered into certain agreements that are identified in section 214(g)(8)(A) of the INA to temporarily enter the U.S. for professional employment. Employers seeking to temporarily employ H–1B1 professionals must file a labor attestation with the Department of Labor in accordance with this subpart as set out in § 655.700(c)(3) and (d), which identify the sections of this subpart H and of subpart I of this part that apply to the H–1B1 program, sections and subsections applicable only to the H–1B program, and how terminology is to be applied. Steps for receiving an H–1B1 visa and entering the U.S. on an H–1B1 visa after the attestation process is completed with the Department of Labor, which differ in some respects from the steps for H–1B visas, are the responsibility of the Department of State and the United States Citizenship and Immigration Services (USCIS) of the Department of Homeland Security (formerly the Immigration and Naturalization Service or INS) and are identified in regulations and procedures of those agencies. Consult the Department of State (*http://www.state.gov/*) and USCIS (*http://uscis.gov/*) websites and regulations for specific instructions regarding H–1B1 visas. Procedures described in this subpart H for obtaining a visa and entering the U.S. after the Department of Labor attestation process, including procedures in this section and § 655.705, apply only to H–1B nonimmigrants, not to H–1B1 nonimmigrants.

(a) *Statutory provisions regarding H–1B visas.* With respect to nonimmigrant workers entering the U.S. on H–1B visas, which are available to nonimmigrant aliens in specialty occupations or certain fashion models from any country, the INA, as amended, provides as follows:

(1) Establishes an annual ceiling (exclusive of spouses and children) on the number of foreign workers who may be issued H–1B visas—

(i) 195,000 in fiscal year 2001;

(ii) 195,000 in fiscal year 2002;

(iii) 195,000 in fiscal year 2003; and

(iv) 65,000 in each succeeding fiscal year;

(2) Defines the scope of eligible occupations for which nonimmigrants may be issued H–1B visas and specifies the qualifications that are required for entry as an H–1B nonimmigrant ;

(3) Requires an employer seeking to employ H–1B nonimmigrants to file a labor condition application (LCA) agreeing to various attestation requirements and have it certified by the Department of Labor (DOL) before a nonimmigrant may be provided H–1B